IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1217

CHARLES SIMKOVICH,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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TO: THE HONORABLE, THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, Charles Simkovich, having been first duly sworn, represents and shows to this Court as follows:

I.

Official Reports

The Third Circuit Court of Appeals on January 6, 1978 affirmed a Judgment of Conviction entered on May 17, 1977 in the U.S. District Court for the Western District of Pennsylvania for willful failure to file Income Tax Returns for the years 1970, 1971 and 1972 in violation of 26 U.S. Code Section 7203.

The decision of the Court of Appeals is not officially reported at all. A Judgment Order was entered. It is as follows:

"Judgment Order"

"In this appeal from a judgment of sentence for violation of 26 U.S.C. Section 7203, the defendant contends that he is entitled to a judgment of acquittal or a new trial because:

(1) he was improperly served with a summons;

(2) he was arraigned before a magistrate rather than an Article III judge;

(3) he was denied assistance of counsel of his choice, a disbarred attorney;

(4) reference was made in the presence of the jury to his choice of a disbarred attorney as his counsel;

(5) the selection of the jury list from the voter registration list is unconstitutional;

(6) the court should have suppressed bank records disclosing his checking account transactions;

(7) the evidence of income tax evasion was insufficient.

We find no error.

It is therefore ORDERED and ADJUDGED that the judgment of the District Court is affirmed.

By the Court,

s/ John J. Gibbons
Circuit Judge

Attest

s/ Thomas F. Quinn
Clerk

DATED: January 6, 1978

Petition for a re-hearing *en banc* was filed with the Court on January 20, 1978.

Order denying Petition for re-hearing was made and entered in the Court of Appeals on February 14, 1978

II.

Jurisdiction of the Court

The Supreme Court of the United States has jurisdiction of this Petition for a Writ of Certiorari to review a decision of the [redacted] Circuit Court of Appeals affirming a [redacted] Count Indictment for a claimed violation of 26 U.S. Code Section 7203 of a willful attempt to evade or defeat income tax and a contempt of court conviction in connection with the trial thereof.

Jurisdiction is conferred by Article III, U.S. Constitution and 28 U.S. Code Sections 1651, 2101 and 1254.

III.

Procedural History

1. Indictment filed December 7, 1976.

2. Arraignment was never had before the Court.

3. Special appearance and Motion to dismiss because of lack of lawful service filed December 21, 1976.

4. Motion for Counsel of Choice made and filed on December 21, 1976.

5. Motion to suppress evidence filed January 17, 1977.

6. Order denying all motion and order denying Motion for Counsel of Choice filed February 8, 1977.

7. April 11, 1977 trial commenced with Defendant being deprived of Counsel of his choice or any Counsel at all.

8. Jury returned a verdict of guilty on April 13, 1977.

9. Motion to set aside verdict and to grant a new trial filed April 12, 1977.

10. May 13, 1977 order entered denying Motion for a new trial.

11. Defendant sentenced to two (2) years and $22,500.00 in fines and Judgment entered on May 17, 1977.

12. Notice of appeal filed on May 17, 1977.

13. Circuit Court decided appeal against Defendant-Appellant on January 6, 1978. No opinion filed.

14. Petition for re-hearing filed on January 20, 1978.

15. Petition for re-hearing denied on February 14, 1978

IV.

Questions Presented for Review

1. Does the accused in a Criminal Case in the U.S. District Court have a 1st, 4th, 5th, 6th and 9th Amendment right to have the assistance of a Counsel and spokesman of his own choice who is not a member of the licensed bar of the Court?

HELD NO.

2. Is a trial that is held where Defendant does not participate because he is unable to do so, and where his chosen counsel and spokesman excluded from assisting Defendant, a denial of life, liberty and property without due process of law?

HELD NO.

3. May the Court acquire jurisdiction over Defendant where he has been served with no summons or warrant and where he makes a timely appearance and moves specially to set aside the summons and warrant?

HELD YES.

4. Does Defendant have to be arraigned before the Court?

HELD NO.

5. Can the Court make prejudicial references to the jury that Defendant wanted to be represented by a disbarred lawyer?

HELD YES.

6. Should the Court have suppressed Bank records that were obtained without a Warrant or Notice?

HELD NO.

7. Was the evidence sufficient to support the verdict?

HELD YES.

V.

Constitutional Provisions, Statutes and Ordinances Involved

1. Amendments 1, 4. 5, 6, and 9 of the Constitution of the United States.

Art. 1. Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

Art. 4. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated.

Art. 5. No person shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty or property without due process of law.

Art. 6. "In all criminal prosecutions, the accused shall enjoy the right to have the assistance of Counsel for his defense."

Art. 9. "The enumeration of the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

§ 7203. Willful failure to file return, supply information, or pay tax.

Any person required under this title to pay an estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, at the time or times required by law or regulation, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000 or imprisoned not more than one (1) year, or both, together with the costs of prosecution. Aug. 16, 1954, c. 736, 68A Stat. 851.

Rule 4(d), (3) provides:

"The Summons shall be served upon a Defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein and by mailing a copy of the summons to the defendant's last known address."

D. That 28 U.S.C. 451 provides:

(a) "As used in this title, the term 'court' of the United States includes the Supreme Court of the United States . . . any any Court created by Act of

Congress the judges of which are entitled to hold their office during good behavior."

Rule 5, Rules of Criminal Procedure provides as follows:

"INITIAL APPEARANCE BEFORE THE MAGISTRATE"

5(c) "Offenses not triable by the U.S. Magistrate."

"If the charge against the defendant is not triable by the United States magistrate, the defendant shall not be called upon to plead."

Rule 10 provides:

"Arraignment shall be conducted in open Court."

5(b) is as follows:

"If the charge against the defendant is a minor offense triable by a U.S. Magistrate under 18 USC 3401, the U.S. Magistrate shall proceed in accordance with the Rules of Procedure for the Trial of Minor Offenses before U.S. Magistrates."

See 18 USC 3401(f):

"As used in this section, the term 'minor offenses' means misdemeanors punishable under the laws of the United States, the penalty for which does not exceed imprisonment for a period of one year, or a fine of not more than $1,000.00 or both . . ."

Rule 43 provides:

"The Defendant shall be present at the arraignment. . . ."

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches

and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

VI.

Statement of the Case

An Indictment was returned on December 7, 1976, in the U.S. District Court for the Western District of Pennsylvania of three counts of willfully and knowingly failing to make income tax returns in violation of 26 USC 7203.

The manner used to attempt to bring Defendant before the Court was a summons sent by certified mail. No summons was served upon Defendant personally by the Marshal as is required by Rule 4,d,3.

Also Defendant was ordered to appear before the Magistrate for arraignment on December 27, 1977. Defendant appeared on December 27, filed Motions contesting the Magistrate's jurisdiction and refused to plead before the Magistrate.

Defendant never was arraigned before the Court as is required by law.

At the very first appearance before the Magistrate and at every appearance Court Defendant demanded his [redacted]SIXTH Amendment rights to be represented by Counsel of his Choice, Jerome Daly.

Before the Magistrate Defendant made a special appearance to contest jurisdiction and moved the Court to dismiss upon the grounds that the Summons was not properly served and that he had not been arraigned within ten days after the Indictment was brought as is required by law.

The Magistrate went ahead and arraigned Defendant over his objection and denied all of Defendant's Motions. Defendant appealed to the Court which upheld the Magistrate.

Before trial Defendant moved the Court to dismiss the Indictment upon the grounds that there were no legal Dollars in circulation upon which an Income Tax can be based.

Defendant moved to suppress all evidence that was obtained by Defendant's bank accounts on the grounds that the warrantless search of Defendant's bank records constituted an unreasonable search and seizure in violation of the Fourth [redacted] Amendment.

Defendant moved the Court to dismiss the Indictment upon the grounds that the Grand Jury was taken only from the voters list and did not constitute a cross section of the public, as non-voters are excluded from Jury service, which violated due process of law.

Defendant also moved the Court to dismiss the Indictment before trial upon the grounds that 26 USC 7203 required under pain of criminal penalty to turn over his private records and papers to the IRS in violation of the Fourth Amendment.

Defendant also moved the Court to dismiss the Indictment before trial upon the grounds that the IRS Code and regulations required Defendant to file a return under Penalties of perjury that it was perfect and without error when, through no fault of Defendant's it was impossible for Defendant to comply with these requirements.

All Motions were denied and the case went to trial on April 11, 1977.

On April 11, 1977, at the start of the trial Defendant made another Motion for Counsel of his choice, Jerome Daly and Gordon C. Peterson. As is shown by the transcript the Court

denied this and the case proceeded to trial with Defendant without Counsel or anyone at the table to help him.

Defendant then advised the Court that he did not know how to defend himself. He did not know what to do in there. He did not know how to cross examine witnesses, make objections and motions; make an opening statement; determine trial strategy or argue the law as the trial proceeded. In short, Defendant stated that he did not know what to say or do and could not take part in the proceedings.

No defense was presented on Defendant's behalf. He took no part in the trial because he was unable.

See the transcript on pages 21, 27, 54, 83 and 86 where the Court and the U.S. Attorney kept constantly throughout the entire trial, and in the final argument by the U.S. Attorney to the Jury, advising the Jury that Defendant has insisted throughout that he has the right to be represented by two individuals who have been disbarred as attorneys. This was done to prejudice the Jury against Defendant regardless of the facts and law.

The Jury returned a verdict on April 12, 1977. Motion was made for a Judgment of acquittal or in the alternative a new trial and was denied on May 3, 1977.

Sentence of 2 years and $22,500.00 in fines were imposed on or about May 17, 1977. Appeal was taken on that day.

The case was submitted to the Court of appeals on January 5, 1978 and was decided without opinion on January 6, 1978.

Petition for rehearing was timely filed for a hearing *en banc* and was denied.

VII.

ARGUMENT

1. It was error to deprive the accused of his right to the assistance of his counsel of his choice where he was unable to conduct his own defense.

At the very first appearance before the Clerk to sign the O.R. Bond in this Case Defendant-Appellant made and filed a Notice of a special appearance and along with Motion to quash the Summons dated December 7, 1976, Defendant notified the Court that he did not want any licensed Lawyer or Public Defender, but on the contrary he wanted his own unlicensed Counsel, Jerome Daly.

Defendant continually advised the Court that he did not know how to defend himself.

When Defendant appeared before the Magistrate on December 27, 1976, the Magistrate denied him his right to Counsel of his choice.

Before trial, Defendant, with the aid of his friends, prepared and filed several Motions and appeared before the Court and attempted to argue them, all without any success.

Defendant advised the Court before trial that he was unable to defend himself. The Court attempted to get Defendant to file a financial statement with the Court to the end that the Court would appoint Counsel. However, this being a tax case, Defendant could not be required to file a statement that could possibly tend to incriminate himself.

When the case was called for trial on April 11, 1977, Defendant was accompanied with Gordon Peterson and Jerome Daly as his Counsel. Defendant made the following Motion and Statement at that time:

"You will please take Notice that I do not want any licensed Lawyer or Public Defender who is licensed by any governmental unit or State unit anywhere, including Pennsylvania, to defend me as my Counsel as they are licensed by my enemy, the State and their philosophy is different from mine.

"I further move the Court to take Judicial Notice of the Canons of Ethics, Codes of Professional Responsibility and Disciplinary Rules of the American Bar Association, the Pennsylvania State Bar Association, the various State Bar Associations in the United States, including the Federal Bar Association, as it appears to me to a certainty that these Bar Associations, in conspiracy with the Courts, Supreme and otherwise, have established a nomocanonical religion based on the nomocanons of said Bar Associations and Courts. That therefore, the Bench and Bar, including this Court in the United States have violated the First Amendment by making a law respecting an establishment of Religion, or prohibiting the free exercise thereof.

"You will further take notice that I am unable to defend myself in Court because I do not know how.

"I hereby appoint as my Counsel, my friends, Gordon C. Peterson and Jerome Daly to represent me as my Counsel, Representatives and spokesmen. Peterson and Daly are the same persons referred to in *USA vs. Stockheimer*, U.S. District Court, W. D. Wisconsin, Dec. 4, 1974, 385 F. Supp. 979, and *USA vs. Gordon C. Peterson*, 550 Fed 2d 379, U.S. Court of Appeals for the 7th Circuit, Jan. 20, 1977.

"Peterson and Daly share the same religious and philosophical opinions as I do. I have trust in them. I am satisfied that they can defend me.

"I therefore move the Court to hold a hearing to determine the same issues as Judge Doyle did in the Western District of Wisconsin; whether or not there be an orderly and peaceable proceeding in this Court.

"I have determined that they are qualified to defend me. I am satisfied that generally they will proceed under my supervision, direction and control.

"This Motion is based upon all of the files, records and proceedings herein and upon the Constitution and laws of the United States."

Peterson and Daly were present and advised the Court that they were not licensed by any Department of Government anywhere, but were only licensed by Defendant, and that they were prepared to represent Defendant at the trial.

The Court then denied Defendant the right to the assistance of Counsel of his choice and Defendant was at the Counsel table alone and without Counsel of any kind, not even a standby Counsel appointed by the government.

Defendant then stated to the Court that he had no training in the law, that this was his first time before the Court and Jury on a Criminal charge. He further stated:

"I do not know how to make an opening statement. I do not know what trial strategy to use or how to execute trial strategy. I do not know how to cross examine witnesses. I do not know how to examine witnesses. I do not know how to present evidence or to make oral motions to the Court. I do not know how to make a final argument. In short I do not know how to defend myself. I do not know what to say so I am going to have nothing to say."

Defendant took no further part in any of the proceedings before the jury because he did not know how.

Each time the Court addressed Defendant he stated:

"I do not know what to say or how to defend myself, so I have nothing to say except that I do not waive any of my rights."

Defendant made no opening statement, conducted no cross examination and made no objections or Motions to exclude

evidence. Defendant made no defense in his own behalf and there was no counsel there to protect him.

Defendant made no final argument to the jury.

All during the trial, the Judge and U.S. Attorney kept making references to the fact that Defendant wanted two disbarred lawyers to represent him. There was no evidence of this in the record before the Jury, but the Court and the U.S. Attorney in his final argument, kept referring to the Defendant's wish for disbarred lawyers to represent him for the sole purpose of placing Defendant in a bad light before the Jury and to convict him regardless of the evidence and law.

Defendant's wish that he have Counsel of his own choice not licensed by his enemy, the government, is further fortified by the U.S. Supreme Court statement in *Faretta vs. California*, 422 US 806, as follows:

> "In the American colonies the insistence upon a right of self-representation was, if anything, more fervent than in England.
>
> *The colonists brought with them an appreciation of the virtues of self-reliance and a traditional distrust of lawyers. When the Colonies were first settled, "the lawyer was synonomous with the cringing Attorneys-General and Solicitors-General of the Crown and the arbitrary Justices of the King's Court, all bent on the conviction of those who opposed the King's prerogatives, and twisting the law to secure convictions."* This prejudice gained strength in the colonies where "distrust of lawyers became an institution." Several Colonies prohibited pleading for hire in the 17th century. The prejudice persisted into the 18th century as "the lower classes came to identify lawyers with the upper class." *The years of Revolution and Confederation saw an upsurge of anti-lawyer sentiment, a "sudden revival, after the War of the Revolution of the old dislike and distrust of lawyers as a class." In the heat of these sentiments the Constitution was forged."*

The Sixth Amendment provides:

> "In all criminal prosecutions, the accused shall enjoy the right . . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

See *Faretta vs. Calif.*, 422 U.S. at 816:

> "The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails."
>
> "The Counsel provision supplements this design. It speaks of the "assistance" of counsel, and an assistant, however expert, is still an assistant."

It should also be noted, in aid to the determination of what is meant by the word "counsel" in the Sixth Amendment that the First Amendment provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and petition the Government for a redress of grievances."

Amendment V provides:

> "No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law."

Amendment IX provides:

> "The enumeration of the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people."

See *Dennis vs. U.S.* 341 U.S. 494. The right to freedom of association, speech, conscience selection of assistance of Counsel and assistants are fundamental religious rights. These are primitive rights.

In the constitutional sense there was no trial at all.

It is a simple, primitive, legal maxim that anything which a citizen can lawfully do for himself, he may lawfully delegate to another by power of attorney to act in his behalf.

See *USA vs. Stockheimer,* 385 F. Supp 979 (W. D. Wis. 1975) where Judge James E. Doyle allowed two disbarred lawyers, Gordon Peterson and Jerome Daly, to act as Counsel for Defendant Stockheimer in a criminal trial. Judge Doyle went on to state:

> "The question arises whether a defendant in a federal criminal case who has effectively waived his Sixth Amendment right to the assistance of counsel nevertheless enjoys a right, under the due process clause of the Fifth Amendment or under any other provision of the Constitution of the United States, to the assistance of a person other than "counsel," as "counsel" is used in the Sixth Amendment. I hold that there is no such federal constitutional right. For constitutional purposes, it is sufficient to guarantee "counsel," as the term is used in the Sixth Amendment.
>
> While the Constitution does not guarantee this defendant the right to assistance by a person other than "counsel" as "counsel" is used in the Sixth Amendment, neither does it forbid him such assistance, unless the due process clause of the Fifth Amendment should be construed so as to protect the defendant from what may or may not prove to be his folly. In my view, the Fifth Amendment should not be so construed. Those experienced in the work of the courts, including the conduct of criminal cases, are likely to consider it foolish indeed for a defendant to undertake to defend himself or for a defendant to enlist the assistance of persons other than those licensed to practice law, but, if the choice is made knowingly, intelligently, and voluntarily, I do not believe that the Constitution should be read to forbid it.

> The defendant has filed motions for orders "to allow Gordon Peterson . . . to be and act as Counsel and spokesman," and "declaring that Defendant has the right to have Jerome Daly . . . accompany and speak for Defendant. . . ." I decline to grant such motions and to enter such order. I prefer to treat the matter as follows: that by filing notices that he has "appointed" or "licensed" them, this defendant has announced his intention to avail himself of the assistance of Gordon Peterson and Jerome Daly in the defense of this case; and that defendant has sought to learn from the court, in advance of trial, whether the court will forbid him to do so. I consider that in the absence of any constitutional or federal statutory provision compelling me either to forbid or not to forbid the defendant such assistance, I may exercise my discretion in the matter.
>
> Clearly, this defendant entertains a massive distrust of the organized bar, and no licensed member of the bar of this state or of another state enjoys his trust. With all his options known to him and understood by him, he has decided to risk conviction and possible imprisonment for three years without the assistance of a person licensed to practice law. But he has also decided not to risk these consequences in a trial in which he defends himself with no assistance. He has decided to risk these consequences in a trial in which he has the assistance of Gordon Peterson and Jerome Daly.
>
> Whether it has even been so I do not know, but it is plain that this is a time in the history of the United States in which the members of various groups on the right and on the left, and members of racial and religious minorities, are experiencing a strong sense of alienation and are deeply suspicious and distrustful of our institutions, including the courts and the organized bar. Obviously, those who have accepted the responsibility for the management and operations of these institutions are not free to abandon them or to subvert or distort them in response to such suspicion, distrust, and hostility. To abandon, subvert, or distort the institutions

would be destructive of many values, and the odds are heavy that it would fail, in any event, to remove the suspicion, distrust, and hostility. For example, in the present case, if the defendant is not forbidden the assistance of Gordon Peterson and Jerome Daly, but if defendant is convicted following the procedures prescribed by law, it seems idle to suppose that his sense of alienation will be the less.

Nevertheless, it seems wiser not blindly to ignore the existence of the suspicion, distrust, and hostility widely harbored against many institutions, including the courts, but rather to make some accommodations which may tend to dissipate these attitudes in some degree among some groups and which involve no significant distortions of the process or unmanageable problems.

I have concluded that in the defense of this criminal prosecution initiated against him by the government, this defendant should not be flatly forbidden the assistance of persons not licensed to practice law.[1]

Having reached this conclusion, I could have reached with ease the further conclusion that defendant should not be forbidden the assistance of a carpenter or a farmer, if preliminary inquiry indicated that the participation of the particular carpenter or the particular farmer did not appear to threaten the orderly conduct of the trial. But this defendant has compounded the difficulty. With complete sincerity, I am willing to assume, he has "appointed" or "licensed" to assist him two persons who have had legal training and experience, but whom the Supreme Court of their state has declared unfit to practice law. With great reluctance, I have concluded that from the viewpoint of a defendant in a criminal case, there is no rational distinction to be made between forbidding him the assistance of a carpenter or a farmer whom he trusts and forbidding him the assistance of a disbarred lawyer whom he trusts.

[1] The applicable considerations will vary, of course, from situation to situation: civil lawsuits generally, civil lawsuits by prisoners, probate, administrative proceedings, and so on.

I have concluded that in the particular circumstances of this case, defendant should not be forbidden the assistance of Gordon Peterson."

Thereafter, Peterson was prosecuted by the Wisconsin State Bar Association, through their agent the U.S. Attorney in Madison, Wisconsin, for the unlawful practice of law in the Federal Court. The 7th Circuit reversed the conviction on January 20, 1977, in 550 Fed 2d 379 and stated in part:

> "The Government frames the issue this way: "Was the offense of practicing law without a license within the ambit of Section 256.30(1) and (2). Wisconsin Statutes, and incorporated by Sections 7 and 13, Title 18, U.S.C., clearly established upon the record, amply supported by evidence, and sufficient to sustain the conviction . . .?"
>
> We need not consider so much of that issue as relates to the sufficiency of the evidence which clearly demonstrated that Peterson was practicing law in behalf of Stockheimer regardless of the various terms which might be applied to the relationship.
>
> The remaining part of the issue is whether or not the Wisconsin statutes prohibiting the practice of law in Wisconsin without a Wisconsin license has been assimilated into federal law as the Government claims rather than preempted by federal law as argued by the defendant.
>
> We hold that the Wisconsin penal statutes are not applicable to the practice of law in the federal courts in Wisconsin, but we must do so for reasons argued by neither party."

Was Judge Doyle wrong to recognize "Counsel" as someone other than a State Licensed Lawyer, who call themselves "Attorneys at Law"? Noah Webster would not think so: In *Webster's First Edition of an American Dictionary of the English Language*, published in 1828, adopted by our Congress, State Legislatures and Courts as a "primary source

for the original meaning of Constitutional terms as used in the Founding Years of this Nation," the word "counsel" is given ten separate definitions in the following order:

COUNSEL, n. . . .

1. Advice, opinion or instruction, given upon request or otherwise, for directing the judgment or conduct of another; opinion given upon deliberation or consultation. Every purpose is established by counsel. Prov. xx. Thou hast not hearkened to my *counsel*. 2. Chron. xxv.

2. Consultation; interchange of opinions. We took sweet *counsel* together. Ps. lv.

. . . . . .

10. Those who give counsel in law; any counselor or advocate, or an number of counselors, barristers or erjeants: as the plaintiff's *counsel*, or the defendant's *counsel*. In this sense, the word has no plural; but in the singular number, is applicable to one or more persons.

Since the words "counselor," "advocate," "barrister," "lawyer," and "attorney-at-law" are also defined separately, logic would say that if our Founding Fathers wanted to limit the assistance to the accused, they would not have used a general term "counsel" but would have, instead, called out the specific type of lawyer they wanted. They did not.

Webster defines the word "lawyer" in 1828 as follows:

LAWYER, n. . . .

One versed in the laws, or a practitioner of law; one whose profession is to institute suits in courts of law, and to prosecute or defend the cause of clients. This is a general term, comprehending attorneys, counselor, solicitor, barristers, sergeants and advocates.

The Judiciary Act of 1789 (1 Stat. 73, § 35) states:

In all courts of the United States, the parties may plead and manage their own causes personally or by the assistance of such counsel or attorneys at law as by the rules of the said court . . . . shall be permitted to manage and conduct causes therein.

In the following year, a second Act was passed seven months before the ratification of the Sixth Amendment, stating: (1 Stat. 118, 1790)

Every person who is indicted of treason or other capital crime shall be allowed to make his full defense by counsel learned in the law; and the court before which he is tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel not exceeding two, as he may desire, and they shall have free access to him at all reasonable hours.

The first Act (the Judiciary Act of 1789) shows that Congress intended that parties—in civil or criminal cases—could plead with or without the assistance of (1) "counsel" i.e., anyone; or (2) "attorneys at law." (There may be understood that the Court had the authority at such times to determine who it would allow as "counsel" or as "attorney at law.")

The second Act (1 Stat 118) shows that Congress did not intend to limit parties to "lawyers" since the word "counsel learned in the law" is used rather than the word "attorneys at law," "counselors," "solicitors," etc.

Then, it is easy to see that the word "counsel" as used in the Sixth Amendment was not to be limited to the "licensed lawyer" of today. History proves that!

Furthermore, the first Act mentioned (1 Stat. 73) makes it clear that any "licensing" was done by the Court and not by the State Government. That such "licensing" was not limited to those skilled in the law, *i.e.* "lawyer" since both the term "counsel" and "attorneys at law" are used. Furthermore, such "licensing" by the Court could not have been for the purpose of setting up some "monopoly" or "royalty"—using the title

of nobility called "esquire" for the former is prohibited by the Magna Charter[2] and the latter, by the U.S. Constitution.[3]

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[2] The Magna Charta as found in "The Second Part of the Institutes of the Laws of England, Edward Coke, published for the Square Dollar Series by Omni Press, P.O. Box 216, Hawthorne, California 90250. p. 45 "Cap. 29. No freeman shall be taken, or imprisoned, or be disseised of his freehold, or liberties, or free customs or be outlawed, or exiled, or any otherwise destroyed: nor will we not pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice of right. (underlining added)

". . .

p. 47 "((4) *De libertatibus.*) This word, libertatus, liberties, hath three significations:

"1. . . .

"2. It signifieth the freedomes, that the subjects of England have; for example, the company of the merchant tailors of England, having power by their charter to make ordinances, made an ordinance, that every brother of the same society should put the one half of his clothes to be dressed by some cloth-worker free of the same company, upon pain to forfeit x. s. & c. and it was adjudged that this ordinance was against law, because it was against the liberty of the subject, for every subject hath freedome to put his closthes to be dressed by whom he will, *et sic de similibus:* and so it is, if such or the like grant had been made by his letters patents.

"3. Liberties signifieth the franchises, and privileges, which the subjects have of the gift of the king, as the goods, and chattels of felons, outlawes, and the like, or which the subject claim by prescription, as wreck, waise, straie, and the like.

"So likewise, and for the same reason, if a grant be made to any man, to have the sole making of cards, or the sole dealing with any other trade, the grant is against the liberty and freedome of the subject, that before did, or lawfully might have used that trade, and consequently against this charter.

"GENERALLY ALL MONOPOLIES* ARE AGAINST THIS GREAT CHARTER, BECAUSE THEY ARE AGAINST THE LIBERTY AND FREEDOME OF THE SUBJECT, AND AGAINST THE LAW OF THE LAND." (emphasis added.)

*State licensed lawyers are part of a monopoly. See In re Jerome Daly, July 16, 1971, ... Minn. ...., 189 monopoly to perform legal services for hire, it is self-evident that they, like all monopolies, must be subject to strict regulation with respect to admission to practice and to the performance of professional services, as well as to public accountability for adherence to the rule of law, canons of ethics, and standards of professional responsibility. . . .

(Footnote continued on following page)

The Colonial charters did not limit "counsel" to that of a "licensed" lawyer, to wit:

In Pennsylvania the Frame of Government of 1683 had contained this clause concerning counsel:

> In all courts all persons of all persuasions may . . . personally plead their own cause themselves, or if unable, by their friend. . . .

In Rhode Island, the Constitution of 1792 provided:

> In all criminal prosecutions the accused hath a right to be heard by himself and his counsel.

The New York Constitution of 1777 simply stated that:

> In every trial of impeachment for crimes or misdemeanors, the party impeached or indicted shall be allowed counsel, as in civil actions.

The Fundamental Constitution for the Province of East Jersey (1683) states:

> . . . And in all courts persons of all perswasions (*sic*) may freely appear in their own way, and according to their own manner, and there personally plead their own causes themselves, or if unable, by their friends, no person being allowed to take money for pleading or advice in such cases.

In both parts of New Jersey, East and West, trial by jury recognition in the early fundamental laws. In West Jersey, where Quakerism predominated and Penn's influence was strong, the charter provisions demonstrate clearly the popular aversion to the legal profession; thus Chapter XXII of the Charter of Fundamental Laws of 1676 reads:

(Footnote continued from preceding page)

[3] Article I., Section 9 states: "No Title of Nobility shall be granted by the United States: . . ." and Article II, Section 10 states: "No State shall . . . grant any Title of Nobility."

. . . The first lawyers were personal friends of the litigant, brought into court by him so that he might "take 'counsel' with them" before pleading. 1 Pollack & Maitland, History of English Law 211 (1909).

. . .

> That the tryals of all causes, civil and criminal, shall be heard and decided by the virdict (*sic*) or judgment of twelve honest men of the neighborhood, only to be summoned and presented by the sheriff of that division, or propriety where the fact or trespass is committed;

and continues immediately:

> that no person or persons shall be compelled to fee any attorney or councillor to plead his cause, but that all persons have free liberty to plead his own cause, if he please. . . .

In the New Jersey Constitution of 1776 extended a guarantee that

> all criminals shall be admitted to the same privileges of witnesses and counsel, as their prosecutors are, or shall be entitled to.

The Massachusetts Constitution of 1780 declared that

> every subject shall have a right to . . . be fully heard in his defense by himself or his counsel, at his election.

The Maryland Constitution of 1776 was hardly less explicit in its provision that

> in all criminal prosecutions, every man hath a right . . . to be allowed counsel. . . .

The New Hampshire Constitution of 1784 stated that

> every subject shall have the right . . . to be fully heard in his defense by himself, and counsel.

The Independent Republic of Vermont in its Constitution of 1777 declared simply that

> in all prosecutions for criminal offenses, a man hath a right to be heard, by himself and his counsel. . . .

See also *Faretta vs. California*, 422 US 806, L. Ed. 2d 562, 95 S. Ct. 2525--422 US at 831 where it is stated:

> "For example, Thomas Paine, arguing in support of the 1776 Pennsylvania Declaration of Rights, said; —"Either party . . . has a natural right to plead his own cause; this right is consistent with safety, therefore, it is retained; but the parties may not be able . . . therefore the civil right of pleading by proxy, that is, *by a Council*, is an appendage to the natural right of self representation. . . ." Thomas Paine on a Bill of Rights, 1777, reprint in 1 Schwartz 316.

The only time the phrase "counsel learned in the law" appeared in these early American Documents was e.g., for "treason, murder, felony, or other capital offense." See Act of South Carolina, 1731. In other words, if your head was at stake, someone "learned in the law" seemed to be guaranteed. The axiom, "The exception proves the rule" is applicable here: If counsel "learned in the law" was intended, or an "attorney" or "councillor" were intended, then it was stated; otherwise, as it is used in Amendment Six, "counsel" means that person in whom the accused chooses to "assist" him.

As the Supreme Court said in *Faretta, supra*, at 5008, 43 LW:

> The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense. It is the accused, not counsel, who must be "informed of the nature and cause of the accusation," who must be "confronted with witnesses against him," and who must be accorded "compulsory process for obtaining witnesses in his favor." Although not stated in the Amendment in so many words, the right to self-representation—to make one's own defense personally—is thus necessarily implied by the structure of the Amendment. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.

It is the accused who is in command to choose to have counsel or not. It is the accused who has the right to determine whether he will have counsel of a friend, a neighbor, or some one "learned in the law" to assist him in his defense.

The Supreme Court continues in *Faretta, supra,* at 5008:

> The counsel provision supplements this design. It speaks of the "assistance" of counsel, and an assistance, however expert, is still an assistant. The language and spirit of the Sixth Amendment comtemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant—not an organ of the State interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment. In such a case, counsel is not an assistant, but a master; and the right to make a defense is stripped of the personal character upon which the Amendment insists . . .

The Court is also requested to take Judicial notice of the Code of Professional Responsibility and the Disciplinary Rules and the Canons of Ethics of the American Bar Association and the Indiana State Bar Association and more especially all the "Cases of Conscience" in the Supreme Court reports of the State of Indiana and other States in the Union.

For a correct definition of "Religion," see *Yoder vs. Wisconsin,* 406 US 205; 32 L.Ed. 2d 15, 92 S. Ct. 1526 (1972).

It cannot be doubted that the Bench and Bar has established a "nomocanonical Religion" based on the nomocanons of the Bench and Bar under the management of the American Bar Association and hence the Disciplinary Rules, the Code of Professional Responsibility and the Canons of Ethics along with the "Cases of Conscience" of the Supreme Courts constitute a law respecting the establishment of Religion in violation of the First and Fourteenth Amendments.

The U.S. Supreme Court in the Selective services cases has followed the definition of Religion in Fellowship of Humanity v. Co. of Alameda, 153 C. S. 2d 673; 315 P. 2d 394 which in part is as follows:

12. *Id.* —Exemptions—Property Used for Religious Worship—The only inquiry in determining applicability of a provision exempting from taxation property used "solely and exclusively for religious worship" is the objective one of whether the belief occupies the same place in the lives of its holders that the orthodox beliefs occupy in the lives of believing majorities, and whether a given group that claims the exemption conducts itself the way groups conceded to be religious conduct themselves; the content of the belief under such test is not a matter of governmental concern, subject to the limitation that the belief cannot violate the laws or morals of the community, and belief or nonbelief in a Supreme Being is a false factor.

13. *Id.* —Exemptions—Property Used for Religious Worship. —The proper interpretation of "religion" or "religions" in taxemption laws should not include any reference to whether the beliefs involved are theistic or nontheistic; religion simply includes (1) a belief, not necessarily referring to supernatural powers; (2) a cult involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from adherence to the belief; and (4) an organization within the cult designed to observe the tenets of the belief.

The law definition of nomo-canon is set forth in Black's Law Dictionary as follows:

> NOMOCANON. (1) A collection of canons and imperial laws relative or conformable thereto. The first nomocanon was made by Johannes Scholasticus in 554. Photius, patriarch of Constantinople, in 883, compiled another nomocanon, or collation of the civil laws with the canons; this is the most celebrated. Balsamon wrote a commentary upon it in 1180. (2) A collection of the ancient canons of the apostles, councils, and fathers, without regard to imperial constitutions. Such is the nomocanon by M. Cotelier. Enc. Lond.

The Catholic Encyclopedia has the following on Nomocanons:

> NOMOCANON, comes from the Greek words *νομος*, meaning law, and *κανον*, meaning a rule. The word nomocanon was first used in the 11th century to indicate canonical collections that were composed of both ecclesiastical and civil laws dealing with ecclesiastical matters. The word was used later to indicate a book containing "cases of conscience," which was employed by the monks of Mt. Athos. The most popular use of the word, however, was in regard to canonical collections containing both secular ecclesiastical laws. This type of canonical collection was proper to the Oriental Churches from the early Middle Ages and played an important role in the history of Oriental Canon Law.
>
> From the 4th century on, an important place was accorded to ecclesiastical matters in imperial law, such as in the Theodosian Code, the Justinian collections, and the Novellae and Bascilicae. Already from the time of Constantine civil rulers had taken on the role of protectors of the Church. As a result civil rulers became involved in matters exclusively, or at least partially, ecclesiastical; and they began to order these matters with civil laws. Collections of these imperial laws dealing with ecclesiastical matters were made and were at first added to strictly canonical collections as appendices. They were later included in the main body of canonical collections, alongside strictly ecclesiastical materials, thus giving rise to a new species of canonical collection that became known as a collection of nomocanons. A "rubric" (a brief sentence indicating the subject matter) was followed by several texts that were intended to demonstrate and support the particular norm in question. These texts were drawn from both civil and ecclesiastical authorities. Frequently only a summation of the text was given, with an indication where it could be found in it's entirety.
>
> Collections of nomocanons have been among the principal sources of Oriental Canon Law since the early Middle Ages. The earliest one is the *Nomocanon L titulorum*, compiled toward the end of the 6th century. It has been falsely ascribed to Joannes Scholasticus. It underwent several revisions and was in use until the 12th century. The most important of all collections of nomocanons is the *Nomocanon XIV titulorum*. It was compiled during the reign of Emperor Heraclius, about the year 629. It is most likely the work of Enantiophanes, although it has been falsely ascribed to Photius. It consists of decrees of councils, texts of letters of the Fathers, and imperial constitutions. . . .

First Amendment—Freedom of Conscience and of Communication. For a criminal defendant to be compelled to be limited to "counsel" at his trial to persons "brain-washed" by government at law schools which may teach philosophies despicable to the Defendant (such as: an individual's rights are secondary to the complete socilization, or all-powerful evolution, of the centralized state) is to violate his right of speech and communication, as well as to stifle his right of conscience which cries out against such subjugation of the spirit:

> Every man has a right to be free to form his own beliefs and to communicate those beliefs to others. Under our constitution, no man, no group of men, nor any branch of government may force another to adopt prescribed beliefs, nor compel a man to declare a belief he does not hold.

Defendant has a conscientious belief that his trusted friends are not "second-class citizens." If he chooses to rely upon them as "counsel," then he should be permitted to do so, since he is the "captain of his own ship," to paraphrase the Supreme Court in *Faretta, supra*, and will be obligated to live with his decision as to reliance upon counsel. If he is denied counsel (laymen) in whom he trusted, he will always harbor a resentment against any governmental body which can convict him after he has been pressured into accepting a "member of the bar" as "counsel." *If he loses his case with counsel of his choice*—he can blame himself.

Mr. Justice Jackson, speaking for the Supreme Court said,

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by work or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us. (Footnote omitted.)
>
> We think the action of the local authorities in compelling . . . transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control. West Virginia State Board of Education vs. Barnette, 319 US 624 (1943).

It is part of Defendant's religious conviction that he must not be limited to 'licensed' mercenaries in any defense which Defendant must make in Court, and the same is set forth in the annexed Affidavit.

Defendant feels that "license" of "counsel" often means "license of incompetency" and "license to exploit," and, often, "license to betray and to sell-out a client."

Fifth Amendment—*Right of Due Process.* No reasonable person could claim that a defendant's obligation to rely for defense in a criminal prosecution upon an unknown stranger, or upon a court-appointed legal "licensee" could meet proper standards of the right to defend, as implicit in "due process," or "fundamental fairness." ***How violative of due process is denial of counsel of trust and choice!***

Sixth Amendment—Right to Counsel. Again, *it is implicitly,* to be effective, ***the right to "counsel of choice, counsel of trust—counsel of availability without economic ruin or collapse of a Defendant with limited financial means.*** The right to counsel who is not a representative or paid agent of government—as is the case of court-appointed attorneys.

Eighth Amendment—***Right Against Cruel and Unusual Punishment.*** Some say this only applies to jail sentences. Let it be noted that by extension it must apply to "licensees" out of sympathy with a "constitutionalist" type of Defendant—as herein—and that forced reliance on such "counsel" can—and has—led to the jail sentences mentioned.

To be limited to "government-approved" counsel—as now practiced—is indeed to submit a criminal defendant to a cruel type of torture where the Defendant has other counsel of trust—regardless of license—membership in a Bar Association—or admission to practice law before a certain court—selected to assist him.

Nineth Amendment—***Retained Rights.***

> ***The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.***

It should be noted that nowhere in the federal, or any state constitution, is the power given to government to restrict counsel available to defendants in criminal actions brought against a citizen by government, to officers of the government or of the court—who in practice are nearly always the adversary—rather than the advocate—of the Defendant.

If the power to consult with counsel of choice and trust is not delegated to the federal or state government (wnich it is not) then said power to consult, to take advice from, to delegate and authorize, to make proxy, to appoint as spokesman—all such powers are reserved to the Defendant, as clearly spelled out in the above quoted Tenth Amendment.

Thirteenth Amendment—***Right against Involuntary Servitude.*** Defendant, ***if he is required to seek counsel only from lawyers whose fees are beyond reasonable payment by Defendant—or in the alternative to rely upon court-appointed lawyers where indigency is provable—then is subjected to a type of involuntary***

servitude to lawyers and members of the bar—including the judges who are former lawyers and members of the bar.

Fourteenth Amendment—Equal Treatment and Due Process. *No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.*

Defendant states that *his state HAS made and DOES attempt to enforce a "law" which does abridge the privileges or/and immunities of Defendant as a citizen of the United States.* This "law" is that one making it a criminal offense to have a trusted friend to give "counsel", or to "represent" this Defendant.

What could cause a more "chilling effect" on a Defendant's struggle for justice than to have a criminal charge hanging over him and his "counsel" of trust and confidence because of the lobbying power of lawyers—and their use of the government to entrench incompetency, sycophancy and a protection from stimulating competition?

> . . . the right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial. *Glasser vs. United States*, 315 US 60, 76 (1942).

The State or Federal Government could have no compelling interest sufficient to deny counsel to an applicant. The right to counsel is an absolute precondition to a fair trial, and denial of it is *per se* unconstitutional. *Argersinger vs. Hamlin*, 407 US 25 (1972); *Glasser, supra; Hamilton vs. Alabama*, 368 US 52, 35 (1961).

It has been held in some jurisdictions that where a Defendant has failed to establish indigency that he has "waived the right to court-appointed counsel." Where the Defendant is

demanding that the Court recognize the "counsel" chosen by the Defendant (regardless of bar admission), indigency is not relevant. Where the Defendant is willing to provide his own "counsel," at no expense to the public, his declining to give financial data to obtain "court-appointed counsel"—where he does not seek court-appointed counsel, but wants to use lay-counsel of trust, and of choice, cannot properly be held to be a waiver of counsel. *Rather, it would be a compelled waiver* (if his own choice of counsel were not permitted) imposed upon him by government officials in violation of their oath under Article VI, Sections 2 and 3 of the United States Constitution, to uphold the rights of the Defendant, guaranteed under the Constitution.

In other words, *waiver of court-appointed counsel does not necessarily constitute real or constructive waiver of counsel*, and most certainly does not where the Defendant continues to insist on his choice of trusted friend or friends as the "assistance of counsel" he knows to be his under the Sixth Amendment.

The right to counsel can only be "competently and intelligently waived" says the United States Supreme Court. *Johnson vs. Zerbst*, 304 US 458, 465 (1936).

The right of counsel guaranteed by the Constitution *contemplates the services of an attorney devoted solely to* the interests of his client. *Von Moltke vs. Gillies*, (1948) 332 US 708, 725.

The right to counsel at a criminal trial is deemed so fundamental to the interests of justice that denial thereof *automatically vitiates any conviction obtained* (the "automatic reversal" rule). This is true even though there is no showing of any prejudice or unfairness in the proceedings, or even any need for having counsel. (See *Gideon vs. Wainwright*, 372 US 335 (1963)).

The right to counsel exists not only at the trial thereof, but also "at every stage of a criminal proceeding where substantial rights of a criminal accused may be affected." *Mempha vs. Rhay,* 389 US 128 (1967).

A conviction obtained where the accused was denied counsel is treated as void for all purposes. *Burgett vs. Texas,* 389 US 109 (1967).

An accused must be allowed to employ counsel of his own choice and he must be given a reasonable opportunity to do so. *Chandler vs. Fretag,* 384 US 3 (1954).

And the same case holds:

> Regardless of whether petitioner would have been entitled the appointment of counsel, his right *to be heard through his own counsel* IS UNQUALIFIED.

In the case of *US vs. Tarlowski,* US Dist Ct, East Dist. NY, 68-CR-278, 7/22/69, the Court held that to deny the Defendant his accountant in an audience with IRS was tantamount to the denial of "counsel".

The Court is asked to take judicial notice that there is no requirement in the Constitution that a federal judge be—or that he has been—a lawyer—licensed or not.

If this be true, it is ridiculous to suppose that in the early days of the Republic that "counsel" of a criminal defendant would have to be a "licensed lawyer" in order to appear before a judge who was not necessarily a "licensed lawyer."

The Court is asked to take judicial notice of the Constitution of the United States—and that it does not require that members of Congress—those who make the laws of the country—be lawyers. And that the President of the nation responsible for enforcing the laws is not required to be a lawyer.

Also, that a defendant entitled to represent himself in a court—either as plaintiff or defendant—need not be a lawyer.

Therefore, if the lawmakers and the law-enforcers do not have to be licensed lawyers, and if the Defendant can appear in Federal and State Courts without being a lawyer—what strain of logic requires his "counsel" be a "licensed lawyer"?

From *Tarlowski, supra,* at 35-172 (?):

> For a government official to mouth in a ritualistic way part of the warning about the right to counsel while excluding the person relied upon as counsel, is, in effect, to reverse the meaning of the words used. The communication was the act, not the language. It said clearly: "I am a government official with badge and identification. Tell me and give me what I want. Do not have your advisor with you."

and, further, *Id.*

> Both interviews of the defendant, from which his accountant-advisors were excluded were in violation of the rights of defendant guaranteed by the due process clause of the Fifth Amendment. *When a federal official's interference with the right of free association takes the form of limiting the ability of a criminal suspect to consult with, and be accompanied by, a person upon whom he relies for advice and protection, he gravely transgresses.* Evidence obtained as a result of such breach of national policy must be excluded. See *Jackson vs. Denno,* 378 US 368, 387 n. 14; *Weeks vs. US,* 232 US 383.

The right to counsel is very precious and must not be arbitrarily denied with or without a hearing. *US vs. Mitchell,* 246 F Supp. 874, 877 (1965) states:

> The Constitutional right of Assistance of Counsel is too precious for such degenerate subversion.

NAACP vs. Button, 371 US 415; *United Mine Workers of America vs. Illinois State Bar Association;* and *Brotherhood of Railroad Trainmen vs. Virginia State Bar,* 377 US 1, reh den 377

US 960 are cases which reinforce Defendant's claim to counsel without outside restrictions.

The Fundamental Constitution For The Province of East Jersey (1963) states:

1683

> . . . And in all courts *persons* of all perswasions (*sic*) *may freely appear in their own way,* and according to their own manner, *and there personally plead* their own causes themselves, *or if unable, by their friends,* no person being allowed to take money for pleading or advice in such cases.

Defendant shows in the annexed affidavit that he cannot afford without undue financial hardship upon himself and upon his family, the payment of thousands of dollars for legal fees to defend against criminal prosecution for the exercise of what Defendant claims is a natural right.

If the Court were to tentatively consider that Defendant was sufficiently indigent to qualify for appointed counsel, and that such were the only alternative to Defendant appearing *pro se* to represent himself rather than to enjoy the assistance of his counsel which was not tained by "license" or "bar-membership," the compulsion to limit such "counsel" to that appointed by a court, which conceivably was part of the "prosecutorial-team"—since the judge is paid by the same government which is doing the prosecuting—would leave the Defendant with the judge, his "adversary" and his "advocate" all being paid from the same source.

This dangerous situation is noted in the US Supreme Court case of *Burgett vs. Texas,* 389 US 109:

> "If the prosecutor is the Defendant's adversary, so, possibly may be the judge, who is in the government's employment if coupled to this the defendant, because of financial hardship, must accept a court-appointed attorney, who is also in the employment of his adversary—the government, then what justice can the accused be sure of?"

It is respectfully submitted that only by permitting the accused of his "choice of counsel"—licensed or unlicensed at the option of the accused—can the constitutional guarantee of "assistance of counsel" be properly implemented.

It is not pretended that "unlicensed counsel" is a panacea for all injustice, but it is pointed out that because of the bad fame of lawyers among the public, that an ever-increasing portion of that public will never believe that lawyers have not sold them out if a case—and particularly a case *involving constitutional rights—goes against them* (the citizens, as defendants against the government).

The Court is asked to take judicial notice that few of the public trust lawyers—and that the public at large feel that the average lawyer has a license to "steal" and to make "bargains" without the full knowledge of their clients which in effect "sellout" and betray their clients.

The Court is asked to take judicial notice that a defendant "shall enjoy-the assistance of counsel"—according to the Sixth Amendment—and that this cannot reasonably mean that he must "tolerate" with distrust and disgust the holder of a "license" or a "membership" in what he considers a snooty pack of hyenas called a "bar association."

In Matthew 6:24, in the Sermon on the Mount, Christ states:

> *No man can serve two masters:* for either he will hate the one, and love the other; or else he will hold to the one, and despise the other.

The Court is asked to take judicial notice that a "licensed lawyer" or "court-appointed attorney" is exactly in the position of having to consider "two masters."

Shall his primary loyalty be to his professional society—the Bar Association? Shall an "officer of the court's owe his first

loyalty to the court—rather than to his client? Shall a "court-appointed-attorney" owe his allegiance to the government who is paying his fee? Shall he bow down and worship his idol—the license?

"He who pays the fiddler calls the tune."

The Court is asked to take judicial notice that a large segment of the population consider that lawyers conspire to pass laws to make simple things complicated in order that the lawyers' have in-built litigation and earning opportunities.

The Court is asked to take judicial notice that *a large segment of the population consider that the mess which they now consider the government and it's citizens to be in—to have been caused in great part because lawyers sit in Congress and the state legislatures as well as in the political and bureaucratic offices* of the federal and state governments.

The Court is asked to take judicial notice that a large segment of the population consider that the lawyers have a strangle-hold upon the people, and that unless the people can make this choke-hold relax, that the country is headed for absolute ruin.

The Court is asked to take judicial notice that a large segment of the population consider that judges are nothing more than lawyers who have become politicans—and that few uphold their oaths of office.

If the Defendant shows in the annexed affidavit that he is one of the population which believes as indicated in the four preceding paragraphs, *it is obvious that in no way could he "enjoy" the "assistance" of that type of unwanted counsel.* To force it upon him—or to limit his choice of counsel to that type, when he has his own choice of counsel available without cost to the taxpayers.

"Shall enjoy the right of assistance of counsel." It is apparent that if the Defendant "shall enjoy" assistance—since "shall is mandatory in legal contemplation—then it would be impossible for him to "enjoy" assistance of any counsel in whom he lacked trust and confidence. *To enjoy "unwanted counsel" is a mutually exclusive and impossible condition.* To "enjoy" a monopoly on legal counsel set up for the benefit of lawyers—a situation which tempts defendant to retch—can in no possible, reasonable way, be interpreted as his "enjoyment" or "assistance of counsel."

It is alleged by many lawyers and judges that to permit Defendant to "enjoy the assistance of counsel" called for by the Sixth Amendment, would be to permit the violation of a state statute as to the "practice of law"—a criminal offense.

There is no prohibitory clause in the United States Constitution against the so-called "unauthorized practice of law," nor so far as known to Defendant, any similar prohibitory clause in any State Constitution—although purported "statutes" pretend to bar such under state law.

It is pointed out that the *Bill of Rights was adopted to protect the people in their rights—not to protect government.*

See also *Powell vs. Alabama,* 287 US 45, where it is stated:

> ". . . If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably MAY NOT BE DOUBTED THAT SUCH A REFUSAL WOULD BE DENIAL OF A HEARING, AND, THEREFORE, OF DUE PROCESS IN THE CONSTITUTIONAL SENSE." (Emphasis added) 287 US at 69.

What a state may not do by direct regulation (prohibit "assistance of counsel" to a criminally accused), it may not do indirectly by "licensing," permit, or registration statutes.

Thus, just as a state may not constitutionally ban all speech in public places, it may not require, as a condition precedent to the exercise of free speech in public, that a citizen obtain a license or permit, the granting or denial of which is discretionary with local authorities. (In Court.) See, for example, *Lovell vs. Griggin*, 303 US 444 (1938); *Schneider vs. Town of Irvington*, 308 US 147 (1939).

Many courts claim they have the "inherent power to regulate the practice of law in their courts." *But they do not have any inherent power to keep litigants out of their courts who appear pro se.* If they lack this power, they do not have an inherent power to deny the *pro se's* choice of "assistance of counsel." Nowhere in the Constitution is an inherent power recognized in the courts to deny counsel of choice.

It should be settled doctrine that all powers in the United States are *"delegated powers"*—from the sovereign—THE PEOPLE, when it comes to government.

Some courts demand that "counsel" must be "admitted" to practice before the Court. Defendant is not challenging this concept where applied to professional lawyers licensed by the state. But,

> "A requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement (Note: Defendant's appeal for support from the jury in his criminal prosecution) is quite incompatible with the requirements of the First Amendment." *Thomas vs. Collins*, 323 US 516 (1943).

In conclusion of this assignment of error, it is apparent that Defendant was denied his inalienable First, Fifth, Sixth and Ninth Amendment rights to the assistance of Counsel of his own choice; a Counsel he could trust and enjoy.

Therefore, the Judgment should be reversed on this ground alone.

2. The Court erred in refusing to quash the Summons because of illegal service by mail.

The Summons in this case was mailed to Defendant and received by Defendant's wife. Defendant was never served nor was a copy left at his dwelling house.

Rule 4 (d), (3) provides:

> "The Summons shall be served upon a Defendant by delivering a copy to him personally, or by leaving it at his dwelling house or usual place or abode with some person of suitable age and discretion then residing therein and by mailing a copy of the summons to the defendant's last known address."

This rule was not complied with by personal service or by service at Defendant's home.

Therefore, when Defendant appeared to sign the Bond on December 21, 1976, Defendant also filed and made a special appearance to contest the jurisdiction of the Court and made a Motion to quash the service of the Summons.

The Rules of Criminal Procedure were not complied with and thus the procedure violated the Fourth and Fifth Amendments to the Constitution of the United States.

See *Brown vs. Duggan*, 329 Fed Supp 207, where the Court stated:

> "Criminal Rules 3 and 4 must be strictly complied with so that liberty may not be deprived in violation of the Fourth and Fifth Amendments."

3. The Court erred in refusing to dismiss the Indictment upon the grounds that Defendant was not arraigned within 10 days as is required by law.

Defendant was illegally arraigned before the Magistrate on December 27, 1976, over his objection, and without Counsel.

Defendant has not been arraigned in open Court, before the Court, in the manner prescribed by law as of this date.

The attempted arraignment before the person designated as the U.S. Magistrate if null and void because he had no lawful authority to conduct an arraignment for the following reasons:

A. That Sec. 631 of 28 U.S.C. is unconstitutional and void in that it attempts to vest the Judicial Power of the United States in the U.S. Magistrate in violation of Article III of the Constitution of the United States which restricts the vestment thereof as follows:

> "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme Court and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated times receive for their services, a Compensation, which shall not be diminished during their Continuance in Office."

B. That 28 U.S.C. 631 is unconstitutional because it limits that qualification of U.S. Magistrate to persons who are members of the Bar monopoly; and it sets the term of the Magistrate at six years. Magistrates do not hold their offices during good behavior, but rather for eight years or until they are removed by the Judges of the Court.

C. That U. S. Magistrates have no constitutional or lawful jurisdiction to sit as a Judge of the Court at all.

D. That 28 U.S.C. 451 provides:

> (a) "As used in this title, the term 'court' of the United States includes the Supreme Court of the United States, . . . and any Court created by Act of Congress the judges of which are entitled to hold their office during good behavior."

> "The term 'judge of the United States' includes judges of any court created by Act of Congress, the judges of which are entitled to hold office during good behavior."

E. That the Magistrate has no jurisdiction to conduct an arraignment in violation of Rule 5 in this case.

Rule 5, Rules of Criminal Procedure provides as follows:

> "INITIAL APPEARANCE BEFORE THE MAGISTRATE"
>
> (c) "Offenses not triable by the U.S. Magistrate."
>
> "If the charge against the defendant is not triable by the United States magistrate, the defendant shall not be called upon to plead."

Rule 10 provides:

> "Arraignment shall be conducted in open Court."

Rule 43 provides:

> "The Defendant shall be present at the arraignment.
> . . .

Even if the Magistrate was constitutional this is not a petty offense over which he has jurisdiction because the possible fine in $10,000.00 on each Count.

Defendant raised this objection to improper arraignment before trial and in post trial motions.

The Court has not arraigned Defendant according to law as of this date. Therefore, Defendant is entitled to have the Indictment dismissed because he has not been arraigned in keeping with the requirements of the Sixth Amendment and 18 USC 3161 (c).

Rule 5 (b) of the Federal Rules of Criminal Procedure sets out what offenses that the Magistrate has jurisdiction to proceed in accordance with the Rules of Procedure.

5(b) is as follows:

> "If the charge against the defendant is a minor offense triable by a U.S. Magistrate under 18 USC 3401, the U.S. Magistrate shall proceed in accordance with the Rules of Procedure for the Trial of Minor Offenses before U.S. Magistrates."

See 18 USC 3401 (f):

> "As used in this section, the term 'minor offenses' means misdemeanors punishable under the laws of the United States, the penalty for which does not exceed imprisonment for a period of one year, or a fine of not more than $1,000.00 or both, . . .

Thus it is seen that pursuant to Rule 5, the Arraignment cannot take place before the magistrate because 26 USC 7203 provides for a penalty of one year and $10,000.00 for each offense.

See *USA vs. Tirasso*, 44 U.S.L.W. 2478.

3161 (c) of 18 U.S. Code provides:

> "The arraignment of a defendant charged in an information or indictment shall be held within ten days from his first appearance before a Judicial officer."

This statute has been deliberately flouted by the Court and U.S. Attorney. The only remedy is a dismissal of the charges.

4. The Court erred in depriving Defendant-Appellant of due process of law by continuously alluding to the fact that Defendant's chosen counsel were disbarred attorneys, and in permitting the U.S. Attorney to comment on this fact in his final argument to the Jury, for the purpose of prejudicing the Jury against Defendant regardless of the facts.

Although there were no facts in the record before the Jury about who Defendant wanted as his Counsel, the Court on

several occasions during the trial alluded to the fact that Defendant wanted two disbarred attorneys to represent him during the trial. This was done for the sole purpose of prejudicing the jury against Defendant without regard to the facts. The trial Judge showed a definite bias and prejudice against Defendant all during the trial as is shown by the transcript. He was not satisfied that Defendant was in there unable to defend himself, but the Judge had to go further and prejudice the jury by referring to Defendant's Counsel in an unnecessary and derogatory manner. (See transcript pages 21, 27, 54 and 86.)

The qualifications and records of Gordon Peterson and Jerome Daly in their unsuccessful attempt to support the Constitution of the United States was not an issue in the case.

The Fifth Amendment right to Due Process of Law is violated by such prejudicial conduct.

The trial Judge should be careful not to say anything which may have the effect of prejudicing the cause of the Defendant before the Jury. See *U.S. vs. Wheeler*, 219 F2d 773; *Banning vs. U.S.*, 130 Fed 2d 330; *U.S. vs. Link*, 202 Fed 2d 592; *U.S. vs. Domres*, 142 F.2d 477.

Defendant is entitled to a new trial because of this deliberate prejudicing of the Jury by the Court and U.S. Attorney.

5. The Court erred in refusing to suppress the evidence obtained from Defendant's Bank consisting of Defendant's checking account records.

The IRS obtained copies of Defendant's Bank records and his cancelled checks from the Bank without any notice to Defendant and without a Warrant.

This was Defendant's bank account. Defendant owned the proprietary interest in the account. It was a part of Defendant's effects.

The Fourth Amendment provides as follows:

Article IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment provides that no person shall be deprived of life, liberty or property without due process of law.

At the very least Defendant should have received notice before the IRS gained access to his account.

CAN THE SPECIAL AGENTS OF THE INTELLIGENCE DIVISION OF THE IRS USE THEIR CIVIL SUMMONS TO OBTAIN EVIDENCE WHEN THE ELEMENT OF CRIMINAL WILLFULNESS HAS BEEN PREDETERMINED?

The Courts have consistently held that the government may not use the civil summons power to further a solely criminal investigation.

Subsequently, the Courts have held that a legitimate challenge to the Section 7502 power is the challenge that the information is sought for the improper purposes of gathering evidence for subsequent use in a criminal prosecution. *Reisman vs. Caplin* (1964), 375 US at 449; *Boren vs. Tucker* (CA9), 239 F2d 767; *US vs. Henry* (1974), 491 F2d 702.

> "This Court has reservations about the propriety, if not the constitutionality of the use of Section 7602 by an intelligence agent in what is normally a criminal investigation." *Kirshenbaum vs. Beerman* (1974), 376 F Supp 399.

The Sixth Circuit, in *US vs. Henry, supra,* disallowed the summons on the grounds that:

> "Where information sought by I.R.S. summons has obvious and strong potential for supplying information needed in pending Federal criminal case, use of a Civil summons is an abuse of powers."

The Court went on to remark that such would be the case if a criminal tax case had been recommended.

In the case where the government has predetermined the element of guilt by predetermining willfulness, the summons power should also be denied because it is an abuse of powers and the government should proceed, if at all, by the use of search warrants.

MUST NOT THE INTERNAL REVENUE SERVICE GIVE NOTICE OF SUMMONS ISSUED UNDER THEIR AUTHORITY?

Three Appellant Courts have failed to consider the United States Supreme Court decisions rendered in *Jenkins vs. McKeithen,* 395 US 411 (1969) and in *Donaldson vs. US,* 400 US 517 (1971).

The history of this is:

In Reisman vs. Caplin, 375 US at 445-446 (1964), the Supreme Court decided that:

> "A witness or any interested party may attack the summons before the hearing officer."
>
> and
>
> ". . . in any . . . procedures before either the district judge or United States Commissioner, the witness may challenge the summons on any appropriate ground."

Including

> "the defense that the material is sought for the improper purposes of obtaining evidence for use in a criminal prosecution."

and

> ". . . in the event the taxpayer is not a party to the summons before the hearing officer, he, too, may intervene."

Reisman therefore attempted to establish a protection for the taxpayer and his right of notice.

In 1965, in *Re Cole,* 342 F2d at 7, the Appellate Court would not go along with the theory of notice as conceded by *Reisman* and said:

> "Whether or not such an inference should be drawn we do not need to discuss because the present case is so clearly distinquishable on its facts from *Reisman* that it stands outside the reach of the holding in that case."

In 1972, the next case expanded upon the judgment of *Cole* in *Scarofiotti vs. Shea,* 456 F2d at 1053, the Court, in reliance on *Cole,* denied that any notice was required and yet Cole made no such assertion. The *Scarofiotti* Court felt that:

> ". . . clearly, the duty here claimed is not so plainly defined as to be free from doubt."

The most recent case, *US vs. Continental Bank and Trust Co.,* 503 F2d at 49 (1974), relied upon *Scarofiotti* and *Cole* to deny prior notice.

These Appellate Court cases have relied upon prior Appellate Court decisions and inaccurately expanded their meaning—wrongly interpreting the Appellate Court decisions and totally disregarding the major opinions rendered by the United States Supreme Court.

In 1969, the Supreme Court in *Jenkins vs. McKeithen,* 395 US 411, made it clear that persons being investigated had a right to appear and cross-examine witnesses the government was interviewing:

> "If the Commission in fact makes an actual finding that a specific individual is guilty of a crime due process requires (1) the Commission to afford a person being investigated the right to confront and cross-examine the witnesses against him."

and;

> "In the present context where the Commission allegedly makes an actual finding that a specific individual is guilty of a crime, we think that due process requires the Commission to afford a person being investigated the right to confront and cross-examine the witnessses against him." *Jenkins, supra,* at 421.

The Court, in *Donaldson vs. US,* 400 US 517 (1971), went so far as to identify the taxpayer investigation by the special agent of the IRS as equal to that in *Jenkins* and stated:

> "The rule of *Jenkins* clearly applies to the taxpayer in this suit. The requirements of procedural rather than State criminal investigations are involved. The proceedings contemplated in the summons . . . is a criminal investigation. The result will be a determination of whether to bring criminal charges. The teachings in the *Jenkins* case is that such a proceeding may not be held without affording the taxpayer an opportunity to attend to cross-examine and to rebut."

The Defendant in the instant case was not notified by the IRS of their proposes use of the summons.

Due process means notice. The right to due process, the right to appear and cross-examine witnesses carries, incident to it, the mandate of notice of the proceedings.

The summons/es issued in the instant case are therefore invalid.

CAN CONGRESS PASS LEGISLATION WITH THE INTENT TO VOID THE FIFTH AMENDMENT PROVISION OF THE U.S. CONSTITUTION. AND CAN

THE INTERNAL REVENUE SERVICE USE SUCH INFORMATION TO FURTHER A CRIMINAL INVESTIGATION?

The intent of the framers of the bank Secretary Act of 1970 was:

". . . to provide a means of piercing the veil of secrecy."

Mr. Brown of Michigan, *Congr. Record*, House, May 25, 1970, page 16962

The purpose of the act was:

". . . to deal with two major problem areas in law enforcement."

Congr. Record, House, May 25, 1970, page 16950

"In the past decade, as organized crime and criminals have become more sophisticated, more and greater use has been made by criminal elements of our nations' financial institutions. Law enforcement officials believe that an effective attack on organized crime requires the maintenance of adequate and appropriate records by financial institutions. The bill does require this, and in such a manner as to facilitate criminal, tax and regulatory investigations."

Congr. Record, House May 25, 1970, page 16950

"The Internal Revenue Service . . . told us . . . of their . . . concern . . . on the record keeping practices of the domestic American Banks . . . the concern . . . stemmed from . . . a trend . . . in the larger banks away from . . . microfilming . . . checks drawn on them. On several occasions . . . the Internal Revenue Service have been impeded in their investigations because microfilms of certain checks had either been destroyed or were not made in the first place."

Congr. Record, House, May 25, 1970, page 16953

"While photocopies or microfilms of checks are probably considered by law enforcement people as the most important kind of record maintained by a bank, they are by

no means the only kind of record which serves a useful purpose in this area. For example, copies of notes, drafts, ledger cards, and so forth, can be highly useful in a criminal investigation."

Congr. Record, House, May 25, 1970, page 16960

"The purpose of the bill is to provide law enforcement authorities with greater evidence of financial transactions in order to reduce the incidence of white collar crime."

Mr. Proxmire, *Congr. Record*, Senate, Sept. 18, 1970, page 32627

In *California Bankers Assn. vs. Schultz*, 416 US 21 (1974), the divided Supreme Court felt that the claim of the depositors that the act violated their Fifth Amendment privilege against compulsory self-incrimination was premature.

Defendant here and now raises the same issue, it is not here premature.

In *California Bankers, supra*, the Supreme Court held the act as constitutional when applied to the banks—they have rendered no opinion when faced with the question of compulsory self-incrimination of the depositors.

The full experience from the opinions of our Supreme Court is contrary to such a view.

The facts speak for themselves—the intent of Congress in passing the act was to force the banks to keep records of the foreign and domestic transactions of its Citizen customers, the purpose being to have such records available for the government's inspection in the investigating and prosecution of crime. The legislation is merely an attempt by the government to circumvent the Fifth Amendment privilege of the taxpayer, and to compel his testimony indirectly through compulsion aimed at the banks by forcing them to reproduce and maintain all records going through their bank which pertain to the taxpayer.

The Supreme Court determined ninety some years ago that:

> "A compulsory production of a man's private papers to establish a criminal charge against him . . . is within the scope of the Fourth Amendment. . . ." *Boyd vs. US* (1886), 116 US 616

The venerable *Boyd* doctrine still retains its vitality. The government may not cavalierly circumvent Boyd's precious protection by first requiring a third party bank to copy all of its depositior's personal checks and then, with an improper invocation of legal process, calling upon the bank to allow inspection and reproduction of those copies. In upholding the Bank Secrecy Act, the divided *California Bankers* Court determined that the government could take the first of those steps without exceeding constitutional limits. *US vs. Miller* (CA5), 500 F2d at 757.

The Supreme Court has consistently held:

> "Any forcible and compulsory extortion of a man's own testimony, or of his private papers, to be used as evidence to convict him of crime, violated both the Fourth and Fifth Amendments." *Boyd vs. US, supra,* at 630.

and in *Miranda:*

> "Where rights secured by the constitution are involved, there can be no rule making or legislation which will abrogate them." *Miranda vs. Arizona* (1966), 86 S Ct 1602

The *language* in Miranda is adequately clear.

Evidence or leads to evidence, obtained through the use of IRS summons or its court-enforcement, and the fruits thereof, should be suppressed because the government has done indirectly what the Constitution prohibits under the Fourth and Fifth Amendments and the rights of the Defendant have been violated thereby.

This illegally obtained evidence was used at the trial to convict Defendant. Therefore, the conviction should be reversed.

6. The evidence is not sufficient to support the verdict.

The government introduced evidence to the effect that Defendant did file returns which they deemed to be protest returns and did claim his Fifth Amendment right against self incrimination.

The return which the regulations required Defendant to sign contained the following language at the bottom:

> "Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete."

The word "complete" means perfect. "True and correct" means without error.

Defendant was a Chiropractor. He had patients who come in at all hours. Some pay by check. Some pay by cash.

Defendant is not charged with tax evasion. He is charged with failing to file a return and swearing under criminal penalties that it is perfect, without error.

The burden of proving Defendant guilty rests with the government to prove his guilt as to every material element beyond a reasonable doubt. The burden never shifts to the Defendant to prove anything.

The burden is upon the government to prove that Defendant's records were adequate and sufficient to enable him to file a return that was complete and correct.

There was absolutely no evidence in this case whatsoever that Defendant's records were adequate to file a return the way they wanted it filed.

Therefore, the verdict is not supported by this lack of evidence that it was within Defendant's ability to comply at the times allegedly required.

Furthermore the Fourth Amendment provides as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In this case the government complains that Defendant did not file a 1040 Income Tax Return with attached schedules and papers and swear that it was perfect.

When Defendant completed the 1040 and signed it, then it would have the character and effect of being his papers. The government has no Warrant to get this paper. 26 U.S. Code is unconstitutional because it requires Defendant to give up his papers without a Warrant or go to jail.

7203 is directly in conflict with the Fourth Amendment. It is therefore unconstitutional.

See 45 Law Week 4098, in the case of *G. M. Leasing Co. vs. USA*, on January 12, 1977, the U.S. Supreme Court held that the Income Tax Statutes relative to search and seizure of private property, papers and effects are limited by the express provisions of the Fourth Amendment. See also *Boyd vs. U.S.A.*, 116 U.S. 616 and *Sea vs. Seattle*, 387 US 541.

It is well settled. It does not require actual entry upon premises and search for and seizure of papers to constitute an unreasonable search and seizure within the meaning of the

Fourth Amendment. Here the government has no process at all but only a criminal statutory command contained in 26 USC 7203. The legislature cannot command a violation of the Fourth Amendment.

Therefore, the conviction should be reversed because of insufficiency of the evidence to support the verdict.

Conclusion

Petitioner, who was the accused Defendant in the Courts below, was denied of his First Amendment rights to freedom of religion, speech and Petition along with Fifth Amendment rights to liberty of association in the Courts below. Accused took no part in the trial because he was unable to do so. Accused was deprived of a spokesman or proxy of his choice. Not only that but the Court further insurred a denial of due process of law by making disparaging remarks about Defendant and his associates throughout the trial.

Accused was never lawfully brought to the jurisdiction of the Court and was never lawfully arraigned.

Accused Fourth and Fifth Amendment rights to be secured in his books, papers and records without a Warrant first obtained and his Fifth Amendment right against self-incrimination were trampled under feet by the trial Court.

Not one of the accused rights as secured by the Bill of Rights were upheld. The Accused Petitioner is deprived of his life, liberty and property without due process of law.

WHEREFORE, your Petitioner prays that a WRIT OF CERTIORARI issue from this Court directed to the Court of Appeals for the Third Circuit commanding that the record be

certified up to the end that the Judgment of the Courts below be reversed and that Petitioner be granted a Judgment of acquittal on all charges or in the alternative a new trial.

Respectfully submitted.

CHARLES SIMKOVICH, *In Pro Per.*
R.D. No. 4, Route 51,
Belle Vernon, Pennsylvania 15012.

Subscribed and sworn to before
me this .... day of ....., 1978.

.....
Notary Public

My Commission Expires: